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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ANGIE WESCO-ALEXANDER, Plaintiff and Appellant, v. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM et al., Defendants and Respondents.	B288800 (Los Angeles County Super. Ct. No. BS163430)

APPEAL from a judgment of the Superior Court of Los Angeles County, Amy D. Hogue, Judge. Affirmed.

Lewis, Marenstein, Wicke, Sherwin & Lee, Thomas J. Wicke, and Joon Y. Kim for Plaintiff and Appellant.

Matthew G. Jacobs and Preet Kaur for Defendants and Respondents.

Angie Wesco-Alexander accepted a voluntary layoff from California's State Compensation Insurance Fund and, nearly two years later, applied for disability retirement. The California Public Employees' Retirement System (CalPERS) denied her application. The trial court denied her petition to compel CalPERS to give her disability retirement. Wesco-Alexander appeals, arguing substantial evidence does not support this denial. She also contends the court improperly excluded the opinions of Wesco-Alexander's doctor and failed to exercise independent judgment. We affirm.

I

We recount the facts.

A

Wesco-Alexander worked for the Insurance Fund as a program technician. In that position, she opened envelopes and sorted, scanned, and indexed documents on a computer.

During Wesco-Alexander's time at the Insurance Fund, which began in 1990, she suffered multiple injuries and developed many maladies. For example, in 1994, she experienced wrist pain, which she attributed to "repetitive use of the wrists" at work. The same year she fractured her shin bone, "possibly from kneeling repetitively at work," and injured both wrists when "she picked up a thick file" that "slipped through her fingers." In 1995, she injured her foot when a copier door fell on it. A year later she was diagnosed with "bilateral tendinitis, both wrists," and "[e]arly carpal tunnel syndrome." In 2000, a shelf fell on her, injuring her left hand, back, shoulders, and wrists. Wesco-Alexander underwent repeated surgeries and took repeated absences from work. She says her pain only increased. She stopped going to work in 2010.

In 2011, the Insurance Fund consolidated its operations and closed the office where Wesco-Alexander worked. The Insurance Fund gave her the option of relocating to another office but she chose to be laid off.

About two years later, in 2013, Wesco-Alexander applied for disability retirement. She claimed the disability occurred in 2009 while "working on scan machine when [her] neck and shoulders locked up." Her application was denied at every stage. First, CalPERS denied her application. Next, an administrative law judge issued a proposed decision upholding CalPERS's denial. Then, CalPERS's Board of Administration adopted the proposed decision.

Wesco-Alexander petitioned the trial court for a writ of mandate to compel CalPERS to give her disability retirement. The trial court conducted a thorough review: three hearings, two written tentative orders, and multiple rounds of briefing. The court rejected Wesco-Alexander's claims.

B

The trial court rooted its finding that Wesco-Alexander "failed to establish she is incapacitated for performance" of her job in its review of the administrative record, which includes scores of medical reports spanning two decades.

The reports of three doctors are critical.

The first doctor is Ramin Rabbani. He examined Wesco-Alexander in February 2014 and wrote a 63-page report concluding Wesco-Alexander was not "substantially incapacitated for the performance of her usual duties." Rabbani's report details the medical records from 1994 to 1998 and 2006 to 2013.

The second doctor is Simon Lavi, who has been her primary doctor since 2007. Lavi performed four surgeries on Wesco-

Alexander: two carpal tunnel release surgeries, a 2007 surgery to fuse spinal discs, and a 2010 surgery to remove "hardware" from her spine and implant an artificial disc.

In July 2015, at the request of Wesco-Alexander's lawyer, Lavi wrote a report to rebut Rabbani's conclusion that Wesco-Alexander was not substantially incapacitated. Lavi said Rabbani's report "failed to include" Wesco-Alexander's 2010 hardware removal and disc implant surgery. Lavi opined Rabbani's "physical examination does not correlate with [Wesco-Alexander's] subjective complaints." Lavi said it was "difficult to believe" Rabbani found "absolutely no palpable tenderness" when Wesco-Alexander "presented with 8-9 pain out of 10." Lavi opined that, due to Wesco-Alexander's "ongoing symptoms, she is unable to work in any capacity at this time. I continue to believe this incapacity will be permanent." Before Lavi's rebuttal report, Lavi had "defer[red] all factors of permanent disability to" the third doctor critical to this appeal, Dr. Richard Siebold.

Dr. Richard Siebold was the Agreed Medical Examiner in Wesco-Alexander's workers' compensation case. He first examined Wesco-Alexander in 2008 and ultimately wrote 14 reports about her condition. He reported that, although Wesco-Alexander had surgery for carpal tunnel, "the tests for carpal tunnel were negative prior to surgery [and] [t]hey remained negative post-surgery." Siebold advised against the 2010 surgery Lavi performed to remove hardware from Wesco-Alexander's spine. He explained that, before the surgery, "there is nothing in the EMG or nerve study that indicates the patient would benefit from this procedure." In Seibold's final report, he recommended "Work Restrictions," like no work at or above the shoulder level.

He noted "Vocational rehabilitation might be indicated if the job cannot be modified to be within the restriction."

II

Substantial evidence supports the trial court's finding Wesco-Alexander is not incapacitated from performing her job.

The parties agree an employee is incapacitated if she is substantially unable to perform her usual duties. (*Mansperger v. Pub. Employees' Ret. Sys.* (1970) 6 Cal.App.3d 873, 876.)

Wesco-Alexander concedes we review the trial court's incapacitation finding for substantial evidence. The deferential nature of our review means we accept all evidence supporting the trial court's order. We completely disregard contrary evidence. (*Harley-Davidson, Inc. v. Franchise Tax Bd.* (2015) 237 Cal.App.4th 193, 213–214.) We draw all reasonable inferences to affirm the trial court and do not reweigh the evidence. (*Ibid.*)

Rabbani's report is substantial evidence. It supports the trial court's finding because it concludes Wesco-Alexander is not "substantially incapacitated for the performance of her usual duties" and "Wesco-Alexander is able to perform [her] essential job duties."

Wesco-Alexander's attempts to discredit Rabbani's report are misdirected. Wesco-Alexander parrots Lavi's claim that Rabbani "failed to include" Wesco-Alexander's 2010 surgery to remove hardware and implant a disc in her spine. In fact, Rabbani's review of medical records notes the surgery — "06/25/10, date of surgery, Dr Lavi, . . . insertion prodisc implant C, with removal of hardware" — as well as Siebold's preoperative skepticism of the surgery and Wesco-Alexander's postoperative physical therapy. Rabbani apparently chose not to include the

surgery in some sections of his report. Mentioning a surgery in one section rather than another does not nullify this report.

Rabbani's report is imperfect: it details medical records from 1994 to 1998 and 2006 to 2013, but none from 1999 to 2005. Wesco-Alexander attacks this shortcoming, but substantial evidence need not be perfect so long as it is reasonable, credible, and of solid value. (See *Rivard v. Bd. of Pension Commissioners* (1985) 164 Cal.App.3d 405, 409–410.) Rabbani's report meets those criteria. It recounts reams of medical records, incorporates Rabbani's findings from his office examination of Wesco-Alexander, and is 63 pages long. Rabbani's report is substantial.

Wesco-Alexander argues the trial court erroneously said Rabbani "found no evidence of tenderness or spasms." In fact, Rabbani reported he found no tenderness on Wesco-Alexander's elbows, wrists, and knees. Given his failure to note spasms, Rabbani's report also suggests he found no spasms. On Wesco-Alexander's lumbar spine, Rabbani found "mild paraspinal spasms and tenderness." On her cervical spine, Rabbani first found "mild paraspinal spasms and tenderness" and then, under a header titled "Palpatory Findings," found "[t]here is no tenderness to palpation of the cervical paravertebral musculature."

Read in context, the trial court's description of Rabbani's findings is precise and accurate. Two pieces of context are essential. First, the fact section of the trial court's order says, "*upon palpation*, Dr. Rabbani noted no tenderness in her cervical back, elbows, wrists or knees while observing mild paraspinal spasms and tenderness in her lumbar spine." (Italics added.) That is accurate. The trial court's later statement that Rabbani "found no evidence of tenderness or spasms" appears to refer back

to the palpatory no-tenderness findings noted by the trial court in the fact section. This reading makes sense given the second piece of context: the trial court was contrasting Rabbani's findings with Lavi, who critiqued Rabbani by saying, "I find it difficult to believe there was absolutely no *palpable* tenderness on examination when [Wesco-Alexander] presented with 8-9 pain out of 10." (Italics added.) Lavi — and in turn the trial court — were referring to Rabbani's finding of no palpable tenderness or spasms to the cervical spine, elbow, wrist, and knee. The trial court obviously studied Rabbani's report. We defer to this evaluation. We do not reweigh this evidence. (*Harley-Davidson, Inc. v. Franchise Tax Bd.*, *supra*, 237 Cal.App.4th at pp. 213–214.)

III

We do not decide whether Lavi's rebuttal report was a "competent medical opinion" because substantial evidence supports the trial court's alternative finding that Lavi's opinions "deserve less weight" than Rabbani's opinions.

The Government Code directs CalPERS's Board to determine an employee's disability on the basis of "competent medical opinion." (Gov. Code, §§ 20026, 21156, subd. (a)(2).) The trial court interpreted "competent medical opinion" to mean "admissible expert testimony from a doctor or other medical professional." In turn, it found "most" of Lavi's opinions are not competent medical opinion because they are based on Wesco-Alexander's "hearsay statements describing her symptoms rather than matters [Lavi] personally observed or diagnosed."

Wesco-Alexander contends the trial court misinterpreted "competent medical opinion" and also erred by finding Lavi's testimony was not "competent medical opinion." Wesco-

Alexander's contentions miss the mark because we defer to the trial court's alternative finding that Lavi's opinions "deserve less weight" than Rabbani's opinions.

Weighing the conflicting opinions of experts is a typical function for fact finders. (See *Glover v. Bd. of Retirement* (1989) 214 Cal.App.3d 1327, 1337–1338.) Wesco-Alexander urges us to assume this role and to reweigh the reports. That is not our proper role. (*Ibid.*)

Substantial evidence supports the finding that Lavi's opinion deserves less weight than Rabbani's. Lavi's role as Wesco-Alexander's long-standing treating physician suggests Lavi may have allied himself with her partisan cause and his own role in her medical history. Lavi, unlike Rabbani, emphasized Wesco-Alexander's *subjective* complaints, noting she "presented with 8-9 pain out of 10" and "Rabbani confirmed this patient appeared credible and cooperative." Lavi critiqued Rabbani's examination because it did not "correlate with the subjective complaints or [Rabbani's] comment that [Wesco-Alexander] was cooperative and put forth her best effort." As the trial court noted, moreover, Lavi "performed multiple apparently unsuccessful surgeries (including a back surgery performed against the recommendation of Dr. Siebold and carpal tunnel surgeries performed notwithstanding negative tests for carpal tunnel syndrome)."

We will not disturb the trial court's finding that Lavi's opinion deserves less weight than Rabbani's.

IV

The trial court properly exercised its independent judgment. To do so, a trial court must not defer to administrative findings. (*Alberda v. Bd. of Ret. of Fresno Cty. Employees' Ret.*

Assn. (2013) 214 Cal.App.4th 426, 435.) It must weigh all the evidence to make its own findings. (*Ibid.*)

The trial court did apply independent judgment. At the first hearing, the court issued a tentative opinion that would have remanded rather than rejected Wesco-Alexander's case. Wesco-Alexander then believed the trial court exercised its independent judgment. Her counsel told the trial court, "You know, the independent judgment test which you did apply in this case allows you and requires you to weigh all the evidence, which you did do." Now the trial court has denied Wesco-Alexander's petition, and she claims the trial court did not exercise its independent judgment. This argument is incorrect.

The trial court said it was exercising independent judgment, and we credit this statement. Its final order declared, "The Court Independently Reviews [Wesco-Alexander's] Petition for the Weight of the Evidence." At a hearing the trial court explained "The question for me is, is there credible, reliable evidence? What's the weight of it?"

Wesco-Alexander cites *Rodriguez v. City of Santa Cruz* (2014) 227 Cal.App.4th 1443, 1454 (*Rodriguez*), but that opinion is inapposite. *Rodriguez* remanded a case where a trial court said an administrative law judge's decision was "entitled to 'deference' " and the trial court "may have disregarded [the disability claimant's] testimony based solely on the [administrative law judge's] credibility finding." (*Id.* at pp. 1444–1454.) Here, the trial court's order contains no language suggesting it deferred to the administrative law judge.

Unable to critique the trial court for deferring to administrative findings, Wesco-Alexander falls back on the argument that the trial court did not weigh all the evidence. The

record, however, reveals thorough and diligent deliberation. The trial court held three hearings, wrote two tentative orders, and received extensive briefing. This decisionmaking was conscientious.

Wesco-Alexander claims the court's weighing of Lavi's opinion was "incomplete and limited to" Lavi's rebuttal to Rabbani's report. Yet when Wesco-Alexander's counsel told the trial court at a hearing that Lavi prepared 55 reports, the trial court responded, "I went through them methodically." The trial court then specifically discussed some of those reports with counsel.

We could go on but will not. Wesco-Alexander's complaints are not with the trial court's standard of review but with the court's weighing of evidence. We do not reweigh evidence. Substantial evidence supports this judgment.

DISPOSITION

The judgment is affirmed. Costs to CalPERS and CalPERS's Board of Administration.

WILEY, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.